

L-QIF: New unregulated fund category in Switzerland

On August 19, 2020, the Federal Council submitted a draft legislation to Parliament in view of introducing a new unregulated fund category for qualified investors, the so-called Limited Qualified Investor Fund ("L-QIF") by way of an amendment of the Collective Investment Schemes Act ("CISA"). On December 17, 2021, this legislation has been enacted in its final form by the Parliament.

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1. Introduction

In June 2019, the Federal Council initiated consultation proceedings to evaluate the interest of the asset management industry to introduce a new category of funds for qualified investors, with significant flexibility in terms of investment policy and restrictions, and with no authorization, approval or direct supervision by the Swiss Financial Market Supervisory Authority ("**FINMA**"). In spring 2021, the competent commissions of the Parliament started to perform reviews of the draft. Remaining divergences between the National Council and the Council of States have been cleared during the 2021 winter session, allowing the final legislation to be enacted.

For an overview of the key issues raised during the legislative process, please refer to our previous newsflashes of [September 2019](#) and of [April 2021](#).

2. Background

The L-QIF is inspired by the success and experiences of non-Swiss investment funds, such as the Luxembourg Reserved Alternative Investment Funds (RAIFs). It is intended to meet the needs of the Swiss institutional investors, which commonly use collective investment schemes to pool their investments. The L-QIF may also suit the needs of Swiss banks and fund managers to tailor investment funds to the specific needs of high-net-worth individuals. The L-QIF is in all respect equivalent to comparable foreign investment structures, such as the RAIF. One of the key goals of the legislator is to enhance Switzerland as place of establishment of funds.

The L-QIF will not be regulated by a separate legal framework, but by new provisions in the CISA. The revised CISA rules define the L-QIF as a Swiss collective investment fund which is (i) exclusively reserved to qualified investors, (ii) not subject to FINMA authorization, approval or supervision, and (iii) as a rule, managed directly or indirectly by a FINMA supervised fund management company (with exceptions for limited partnerships for collective investments ("LPCI")).

3. Deliberations and agreement on final divergences reached by the Parliament

After several deliberations in the Swiss Parliament, two major differences were still standing in the way of an agreement between the two chambers of the Swiss Parliament in the final days of the 2021 winter session. These were, on the one part, the possibility to suspend the investors' right of redemption for a period of more than 5 years, which would have been of essence for the launch of open-ended L-QIFs in illiquid investments, such as in Private Equity, and, on the other hand, the possibility to delegate investment decisions to portfolio managers without a licence to manage collective assets..

With a view of aligning the limitations applicable to open-ended L-QIFs as regards the right to redeem units with those of CISA regulated collective investment schemes, the Parliament finally resolved that the initially proposed maximum five years suspension should be maintained and that no additional flexibility be introduced for L-QIFs. The National Council had initially, at the request of the asset management industry, introduced the possibility to suspend redemption rights for a period exceeding 5 years (which initially had been rejected by the Council of States).

The second, intensively debated divergence related to the delegation of investment decisions for L-QIFS to portfolio managers without a licence to manage collective assets, which are, under the new Swiss regulatory system, subject to a day-to-day supervision of FINMA-licensed privately organized supervisory organisations while the FINMA remains in charge for taking up enforcement actions should a portfolio manager not comply with its regulatory duties. To answer a request of the Swiss independent portfolio managers industry, the National Council had – against the initial proposal of the Federal Department of Finance (FDF) and the decision of the Council of States - amended the draft legislation to allow such portfolio managers to assume the investment management of L-QIFs. In the course of the procedure to clear all differences between both chambers, the National Council finally aligned itself with the initial proposal of the FDF (which had been backed by Council of States) and the Parliament resolved to only allow a delegation of the asset management function of L-QIFs to asset managers of collective assets (which in essence are the equivalent of EU AIFMs under the AIFMD).

4. Next steps

The introduction of L-QIFs represents an important step towards the improvement of the attractiveness of Switzerland as a leading asset management center. The important next phase of the legislative process, which is the consultation process in relation to the new provisions in the implementing ordinance of the Federal Council to the CISA ("**CISO**"), providing for additional details on the L-QIF, is expected to be initiated in Q1 2022.

The new rules on L-QIFs, together with the implementing rules at the level of the CISO, should enter into effect on January 1, 2023.

Please do not hesitate to contact us in case of any questions.

Legal Note: The information contained in this Smart Insight newsletter is of general nature and does not constitute legal advice.

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